



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

SW

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,022	01/25/2002	James F. McGuckin JR.	1111	4795

7590 12/16/2004

Neil D. Gershon
Chief Patent Counsel
Rex Medical
2023 Summer St., Suite 2
Stamford, CT 06905

EXAMINER

KENNEDY, SHARON E

ART UNIT	PAPER NUMBER
----------	--------------

3762

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/057,022	Applicant(s) MCGUCKIN ET AL.	
	Examiner Sharon Kennedy	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-12 is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 6-8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>all</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action or the MPEP.

Election/Restrictions

Applicant's election without traverse of claims 1-12 in the reply filed on October 7, 2004 is acknowledged. Claims 13-19 have been cancelled.

Claim Rejections - 35 USC § 102

Claims 1, 3 and 5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Nilsson et al., US 6,132,405. Note that insert 18 may even comprise metal, and thus has a greater stiffness.

Claims 1, 3, 4, 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Bogue et al., US 4,270,535. Bogue discloses a distal end tapered portion 28, which anticipates the claimed stiffening insert, positioned in the distal tip portion. Although Bogue is not a peritoneal dialysis catheter, Bogue shows the claimed structural features. Further, the preamble is not accorded much patentable weight when the body of the claim is complete in itself. Regarding claim 1, claim 1 requires that the stiffening insert have a stiffness greater than the stiffness of the distal tip. While Bogue does not discuss the flexibilities of the tapered portion 28 and the catheter, the examiner takes the position that the tapered portion is inherently stiffer than the catheter due to its bulk and thickness. The tapered portion 28 has a thickness that is equivalent to the thickness of the outer lumen 16 of the Bogue catheter, and must be stiffer than the

Art Unit: 3762

thinner catheter sidewall 41. Bogue apertures 20 anticipate the claimed side openings.

The claimed first longitudinally extending lumen is anticipated by outer lumen 16.

Claim Rejections - 35 USC § 103

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nilsson '405 in view of Trudell et al., US 5,098,413, or Moncrief et al., US 5,057,075. Nilsson discloses a peritoneal dialysis catheter, however, Nilsson does not expressly disclose that the end is to be coiled. Trudell and Moncrief exemplify that peritoneal dialysis catheters commonly have coiled ends to improve the flow characteristics of the indwelling end. Accordingly, it would be obvious to one of ordinary skill in the art to make the Nilsson end coiled so that it has improved flow characteristics as shown by Trudell or Moncrief.

Allowable Subject Matter

Claims 6-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 9-12 are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note is made of the prior art cited in the attached PTO Form-892 and also the following prior art cited by applicant: Geary et al., US 4,950,259; Sharkawy, US 5,021,044; Markel, US 5,053,004; Martin et al., US 5,797,869; Mahurkar et al., US 5,221,255 and Labianca, US 4,769,016.

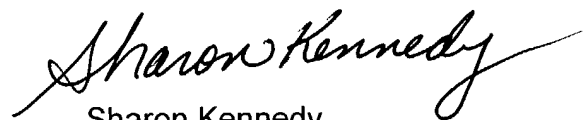
Art Unit: 3762

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Kennedy whose telephone number is 571/272-4948. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571/272-4955.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private AIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sharon Kennedy
Primary Examiner
Art Unit 3762

Sek